

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:09CR3117
)	
v.)	
)	
TRAVES RUSH,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

Traves Rush (Rush) robbed a bank while confined, but allowed to work outside a state prison. Judge Urbom sentenced him to 168 months in prison.

Rush fell into criminal history category VI with 21 criminal history points (filing no. [188 at p. 13](#) ¶ 63). His Guideline range was 210 to 240 months. (*Id.* at p. 19 ¶ 91). Rush was also a career offender and that too put him in criminal history category VI with a base offense level of 32 because he had previously been convicted of two separate felony burglaries of dwellings. (*Id.* at pp. 12-14 & ¶ 64.¹) Judge Urbom varied two levels downward to a total offense level of 30. (Filing no. [191 at p. 3](#).)

Rush has now filed his third § 2255 motion. As to the second motion, I denied it with prejudice and I reached the merits. (Filing no. [244](#).) I deny this one as I have the previous two. I have two independent reasons for denying Rush relief.

First, this is a successive § 2255 motion and Rush has not received permission from the Court of Appeals to file this one despite the requirements of [28 U.S.C. § 2255\(h\)](#) and [28 U.S.C. § 2244\(b\)](#).

¹See the sentencing transcript for more details of the burglaries. (Filing no. [209 at pp. 8-9](#) (CM/ECF pages).)

Second, the Supreme Court's recent decision about the residual clause in the Armed Career Criminal Act, *Johnson v. United States*, 135 S.Ct. 2551 (June 26, 2015), is inapplicable, among other reasons, because the "residual clause" language of U.S.S.G. §§ 4B1.1, 4B1.2 was not used here. Rather, since Rush had committed two previous burglaries of dwellings, and those are enumerated offenses, the residual clause language was not at issue and there is no due process problem in this case.

IT IS ORDERED the Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (filing no. 251; filing no. 252 (Memorandum of Fact and Law)) is denied with prejudice. A separate judgment will be entered. No Certificate of Appealability will be issued.

DATED this 19th day of August, 2015.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge